

<p style="text-align: right;">Page 58</p> <p>1 MS. LISER: I don't anticipate that. 2 (Discussion off the record) 3 (Recess taken) 4 (Documents marked as Kytomaa Exhibits 5 168A and 169A for identification) 6 BY MS. LISER: 7 Q. Doctor, the court reporter has now handed 8 you Exhibits 168A and 169A; is that correct? 9 A. Yes. 10 Q. Yes. Are those the photographs you were 11 just referring to showing the other innerspring 12 unit? 13 A. Yes. So the Exhibit 168A, the lower 14 picture, shows the innerspring unit that is the same 15 as the one depicted in Exhibit 169A, and Exhibits 16 168A and 169A together show a different one from 17 166A and 167A. 18 Q. In fact, the lower picture of 168A actually 19 has both arrays in the photograph, doesn't it, just 20 one leaning against the wall? 21 A. Yes, one in the back, yes. 22 Q. Did you ever count the number of springs in 23 these units? 24 A. I think I may have, yes. 25 Q. Do you know how many there were?</p>	<p style="text-align: right;">Page 60</p> <p>1 the depositions as Exhibit 37A, one of the catalogs 2 that's been provided to us. You will see that 3 portion of the catalog references the innerspring 4 unit for the Nylex II mattress up at the very top. 5 A. Yes. 6 Q. Do you see that the catalog states that 7 there are 308 coils in the Nylex II innerspring? 8 A. Right. What I calculated for you is 9 essentially the -- I counted as one each of the, 10 let's say, round structures that you can clearly 11 see, for example, in 167A. There are a number of 12 other structures simply that were tighter-wound 13 coils that run in the direction of the width, and 14 also the individual coils that I counted as one may 15 be counted as two, for example, depending on exactly 16 how they're put together, which I've not looked at. 17 Q. Right. 18 A. Okay. So I see the number there, 308 coil- 19 bound innerspring unit, but as to exactly how one 20 performs that calculation, I just don't know. 21 Q. Okay. So you can't look at any of the 22 pictures you've got of innersprings from the 23 mattresses you burned and tell me whether those 24 match up with the 308 coils that were provided by 25 Medline in 1997 on the Nylex IIs?</p>
<p style="text-align: right;">Page 59</p> <p>1 A. What I've done is actually gone through the 2 exercise of simply counting, you know, rows and 3 columns and then multiplying those two, but I think 4 I've done that in passing, and it's something I can 5 do again here. It's relatively easy to count. 6 Is that something that you want me to 7 do? 8 Q. Well, do you know how Medline or Creative 9 Bedding counts -- I mean, do you know if they do the 10 same exercise? 11 A. What exercise? The exercise of -- 12 Q. You're right. Why don't you just count 13 columns and rows, because I did that myself, and it 14 probably would be simpler. And you can look at 15 whatever photograph you want. 16 A. So if you look at the top picture, for 17 example, of 169A, all right, so 23 in the direction 18 of the length of the mattress, and 7 in the width. 19 Q. Which equals 161? 20 A. One second. Let me just recount to be sure. 21 Q. Certainly. 22 A. So 23 times 7, is that 161? 23 Q. That's what I got, but I used a calculator. 24 A. Right, okay. 25 Q. Let me show you what was previously used in</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Well, I mean, I think I could perform such 2 an analysis. I have not performed such an analysis, 3 and, you know, all I can say at this time is that if 4 you look at these coils based on the appearance in 5 the document that you have put in front of me, which 6 is labeled with a yellow sticky as a 1997 document 7 with the designation 37A in the bottom right-hand 8 corner -- here I'm looking at a page that's entitled 9 "Nylex II Innerspring Mattresses" -- the springs 10 generally look the same as the ones in my 11 photographs. 12 Q. Compare those springs, then, to Deposition 13 Exhibit 36A, another catalog provided to us by 14 Medline, although I don't personally recall the date 15 of that catalog. Can you tell if the pictures that 16 you have look like either one of those two 17 innerspring units, both or neither? 18 A. Do you mind if I take a quick look at -- 19 Q. Not at all. 20 A. Thank you. 21 (Witness reviews document) So the 22 documents that you've put in front of me, one is 23 37A. 24 Q. That's correct. 25 A. It has a sticky that says "1997." The last</p>

Page 62

1 page of that document has a year of 1997; that is,
2 "Copyright 1997, Medline Industries, Inc."

3 The second document that you put in
4 front of me is entitled 36A, and in felt tip it has
5 written on it "Old Reference Only." And if you look
6 at the last page of that document, it has a year
7 stamp of 1995.

8 Okay. With respect to the appearance of
9 the coil springs, if I look at the 1997 document, I
10 recognize the 1997 document only shows a narrow
11 window into the innersprung or innerspring unit. It
12 appears similar to the innersprings that I uncovered
13 in my burn tests, while, if you look at the
14 innerspring appearance from the 1995 document and
15 compare it to the innerspring units of our test,
16 they actually don't look the same.

17 Q. And to do the exercise that we discussed to
18 determine whether the array we see in these four
19 exhibits count -- matches by count what was
20 described in either of these two catalogs, do you
21 need additional information on how they count coils?

22 A. Yes. I don't know how they count coils, so
23 I wouldn't -- you know, I would have to look at
24 that. I mean, it may well be that some of the
25 springs, individual springs, are made up of more

Page 63

1 than one spring, and it -- it's possible that
2 perhaps in certain areas there are more than one to
3 support heavier parts of your body, for example,
4 that I just don't know about at this time.

5 Q. So as you sit here today you can't tell me
6 that the array we see, for example, in 167A matches
7 the 308-coil count we see in that older catalog,
8 Exhibit 37A, but you might be able to talk to
9 Medline or Creative Bedding and get that
10 information?

11 A. Right. I don't know one way or the other at
12 this time.

13 Q. Okay. Do you know what the reference "Nylex
14 II" means in a Medline catalog concerning their
15 mattresses?

16 A. No, I don't.

17 Q. Do you know whether the appearance of the
18 ticking on the mattress is unique to a Medline Nylex
19 II mattress as opposed to any other manufacturer of
20 mattresses like Hill-Rom?

21 A. I don't -- I haven't looked at, let's say,
22 the population of Medline or other manufacturers'
23 ticking, other than in general there are some
24 differences. But I don't know -- I can't comment on
25 uniqueness.

Page 64

1 Q. You will agree with me that from the
2 exterior a Medline Nylex II mattress with
3 innersprings looks identical to a Medline Nylex II
4 with just convoluted foam?

5 A. Can you ask that question again?

6 Q. Sure. If one was looking at a Nylex II
7 innerspring convoluted foam mattress, it will look
8 identical to the exterior of a Nylex II convoluted
9 foam without innersprings?

10 A. If you were to only look at it, that may be
11 the case, but it probably, you know, would be
12 different in many other ways.

13 Q. In the components or the interior, correct?

14 A. Yes, or the feel or things like that.

15 But if the ticking were the same, which
16 is the exterior skin, which is really essentially
17 all that you see; if the ticking of two mattresses
18 is the same and interior components are different,
19 they may appear the same if you just looked at them.

20 (Document marked as Kytomaa Exhibits 170A
21 and 171A for identification)

22 Q. Doctor, I've handed you -- or the court
23 reporter has handed you -- Exhibits 170A and 171A,
24 which I obtained from Mr. Singer. Do you recognize
25 those photographs?

Page 65

1 A. Yes, I do.

2 Q. I presume that those are Nylex II
3 innerspring mattresses that you tested at Inter-Tek?

4 A. Yes, that's correct.

5 Q. And did you or someone at Inter-Tek place
6 those bright blue bands around the mattress that say
7 "Springs" on them?

8 A. I placed them. I placed them there, and I
9 wrote the word "Springs" on them.

10 Q. I presume you did that to make sure that you
11 could tell the difference between the mattress with
12 springs and the mattress without springs?

13 A. Yes. So that you could distinguish them
14 from the photographs, yes, that's the purpose.

15 Q. Because otherwise, from the photographs,
16 they would have looked identical?

17 A. Yes, from the photographs, that's correct.

18 Q. And, in fact, for someone like Mr. Bob
19 Hollman, if he's looking at a Nylex II mattress
20 without touching it or cutting it open or burning
21 it, it's going to look the same to him whether it
22 has innersprings or whether it doesn't?

23 MR. McKENNA: Objection, speculation.

24 A. Well, I think that my understanding of Mr.
25 Hollman is that, you know, he certainly handled

17 (Pages 62 to 65)

Page 66

1 these mattresses, and as soon as you handle the
 2 mattress, it will feel different.
 3 So if you restrict your -- let's say if
 4 you restrict your determination to looking only
 5 without touching, and you have no other information
 6 suggesting whether it's -- whether the mattress has
 7 springs or only foam, then -- and if you only see
 8 the ticking and can't touch it, then it's difficult
 9 to make a determination.
 10 But if there's other information such as
 11 knowledge associated with, you know, whether the
 12 mattresses have springs based on historical orders
 13 or whether you can -- if you can touch them, of
 14 course, that determination will be influenced
 15 significantly.
 16 Q. You read Mr. Hollman's deposition; is that
 17 correct?
 18 A. Yes.
 19 Q. Did you see at any place where Mr. Hollman
 20 testified he had ever handled Ms. Tolston's
 21 mattress?
 22 A. He may have. Actually, he had -- he
 23 indicated that he often placed mattresses himself,
 24 so he may have, yes.
 25 Q. Did you ever see Mr. Hollman -- excuse me.

Page 67

1 Did you ever read an answer from Mr.
 2 Hollman where he affirmatively stated he had, in
 3 fact, handled Ms. Tolston's mattress as opposed to
 4 generally mattresses in the unit?
 5 A. I don't recall exactly what he said about
 6 her mattress, but, I mean, it's in the deposition.
 7 It's something that I could review.
 8 Q. Did you get an opportunity to see the
 9 mattresses that are being stored in Nashville?
 10 A. Yes.
 11 Q. Did you handle all of them?
 12 A. Yes.
 13 Q. Okay. All colors?
 14 A. I beg your pardon?
 15 Q. I mean, all the mattresses that were there,
 16 whether they were blue, brown, multi-toned?
 17 A. Yes. I laid them all out.
 18 Q. And did you handle them specifically to try
 19 to determine if there were innersprings in them?
 20 A. Yes.
 21 Q. And were there innersprings in all of them?
 22 A. Yes. I specifically looked at the Medline
 23 mattresses to see whether they had innersprings in
 24 them.
 25 Q. And you were able to tell this by just

Page 68

1 feeling the mattress?
 2 A. That's correct.
 3 Q. Did you take photographs of all of the
 4 labels of the mattresses that were there?
 5 A. I did.
 6 Q. And you noted that at least one of the
 7 Medline mattresses, at least the label, states that
 8 it is just a convoluted foam mattress without
 9 innersprings?
 10 A. That's possible.
 11 Q. Okay. I don't mean to make you take my word
 12 for it. Let me see if I can find the photograph.
 13 (Document marked as Kytomaa Exhibit 172A
 14 for identification)
 15 Q. That's actually not your photograph, Doctor.
 16 A. I was just looking at it. I didn't
 17 recognize my hands there.
 18 Q. I've actually not seen yet your photographs
 19 other than the books that you gave me this morning
 20 from that examination.
 21 A. Right.
 22 Q. I think you have it.
 23 A. Yes, I think that's it.
 24 Q. Okay.
 25 A. I think -- although what I've tried to do

Page 69

1 is, in my own photographs, I tried to identify the
 2 label with a number that had been provided,
 3 essentially an evidence number. So the photograph
 4 that you gave me doesn't really identify what piece
 5 of evidence this comes from, so I can't
 6 independently confirm that it's the same one that I
 7 have.
 8 Q. Okay. So there could be more?
 9 A. No, I mean, I just don't know the origin of
 10 the image that you're giving me. That's all.
 11 Q. All right. You have a photograph that you
 12 took from the mattresses stored in Nashville that
 13 has a Medline tag on it that indicates, at least on
 14 the tag, that it is a convoluted foam mattress; is
 15 that right?
 16 A. The tag reads "Convoluted Foam Mattress."
 17 Q. Next time we take a break, we'll copy that
 18 and add that to the deposition, but I don't want to
 19 make you stop now.
 20 And flip back to any of the other tags
 21 you photographed at Nashville. There's one. What
 22 does that Nylex II blue tag say?
 23 A. Do you want to mark this?
 24 Q. Sure.
 25 A. So that says "Nylex II Convoluted

Page 70

1 **Innerspring Mattress."**
 2 Q. So have you read any of the purchase
 3 documents or the invoices between Medline and
 4 Creative Bedding and NHC?
 5 **A. Generally speaking, yes. I mean, but I've**
 6 **not, let's say -- I mean, I've read Hollman's**
 7 **testimony and the discussion of those things, not in**
 8 **detail.**
 9 Q. Is it your understanding that the purchase
 10 documents indicate that all of the mattresses sold
 11 to NHC had innersprings?
 12 **A. That's my understanding, yes.**
 13 Q. But you know that one of the mattresses that
 14 is stored in Nashville that was taken from NHC,
 15 according to the tag, has no innersprings?
 16 MR. SINGER: You're talking about the
 17 blue tag?
 18 MS. LISER: Yes, sir, the blue tag.
 19 **A. So I think my -- according to my feel, my**
 20 **recollection is that this did have innersprings in**
 21 **it.**
 22 Q. So the tag's wrong?
 23 **A. So best I can ascertain right now, although**
 24 **that's something that factually you can always**
 25 **check, the tag -- the tag says "Convolved Foam**

Page 71

1 **Mattress." I don't know what the labeling practice**
 2 **is from the standpoint of whether this specifically**
 3 **means that it has no innersprings. I haven't looked**
 4 **at that. So I don't know what the labeling practice**
 5 **is other than to say that the word "innerspring" is**
 6 **not on the label.**
 7 Q. So what you know and what you can tell the
 8 court and the jury is that there are mattresses from
 9 National Healthcare -- excuse me -- yes, National
 10 Healthcare stored in Nashville that came from
 11 Medline.
 12 **A. Yes.**
 13 Q. And some of the tags say "Convolved
 14 Innerspring Mattress," and at least one blue tag
 15 says "Convolved Foam Mattress."
 16 **A. I think, to my knowledge, only one says**
 17 **"Convolved Foam Mattress," yes.**
 18 Q. Do you know how many mattresses were sold to
 19 NHC by Medline?
 20 **A. A relatively large number. I don't recall**
 21 **off the top of my head.**
 22 Q. And how many mattresses from Medline are
 23 stored there in Nashville that you were able to look
 24 at?
 25 **A. Certainly a smaller number. I photographed**

Page 72

1 **them all, but I haven't written down a specific**
 2 **number.**
 3 Q. So a small percentage of the population of
 4 Medline mattresses that were sold to NHC?
 5 **A. Some fraction thereof. I don't know whether**
 6 **it's more, specifically. I'd have to look at that.**
 7 **I haven't calculated what the fraction is.**
 8 Q. And neither have I, and I don't mean to make
 9 you do it off the top of your head.
 10 So what we can tell is that one
 11 percentage of the mattresses that were sold says on
 12 the tag "Convolved Foam Mattress" and doesn't have
 13 the word "Innerspring"?
 14 MR. SINGER: On the blue tag, we're
 15 talking about?
 16 Q. On the blue tag.
 17 MR. SINGER: On the blue tag.
 18 **A. The blue tab itself doesn't say -- in fact,**
 19 **Exhibit 172 and the associated tab that has**
 20 **essentially a white label that's right behind -- all**
 21 **of these mattresses -- all of these Nylex mattresses**
 22 **have two tabs. They have a blue tab and a white**
 23 **tab. And here we've been focusing all the questions**
 24 **on what the blue tab says, and the white tab right**
 25 **behind the blue tab says "Spring Unit" immediately**

Page 73

1 **above the "Urethane Foam."**
 2 **So limiting the question to the blue**
 3 **tab, the word "Innerspring" does not appear on the**
 4 **blue tab, but it does on the white tab on that same**
 5 **mattress.**
 6 MS. LISER: Objection, nonresponsive.
 7 **A. I'm sorry, what was the question then?**
 8 Q. Obviously you don't know, since you didn't
 9 answer that one.
 10 Do you know anything about the labeling
 11 practices of Medline or Creative Bedding or any of
 12 their manufacturers at the time mattresses were
 13 being sold to NHC?
 14 **A. I don't.**
 15 **(Documents marked as Exhibit 173A through**
 16 **Exhibit 184A for identification)**
 17 Q. Let me hand you what we've now marked as
 18 Exhibit 184A. Is that a black-and-white copy of
 19 your photograph that has a blue tag that -- from
 20 Medline that says only "Convolved Foam Mattress" as
 21 opposed to referencing an innerspring?
 22 **A. Yes. So Exhibit 184, the bottom picture of**
 23 **the two pictures, has a blue label that reads**
 24 **"Nylex," and below that it says "Nylex II Convolved**
 25 **Foam Mattress."**

<p style="text-align: right;">Page 74</p> <p>1 Q. And then 182 was the copy of what you 2 believed to be the white tag from the same mattress 3 that references a spring unit; is that right? 4 A. That's correct. 5 Q. And you cannot tell me or the jury what the 6 labeling practices were for this mattress, whether 7 it should have said "spring" on the blue or whether 8 it shouldn't have said "spring" on the white; is 9 that correct? 10 MR. SINGER: You're talking about just 11 the labeling practices? 12 MS. LISER: Yes. 13 MR. SINGER: Okay. 14 A. I don't know what their labeling practices 15 were. 16 Q. And then we also talked about Exhibit 183A, 17 at least the picture to the left, which is one of 18 the blue -- one of the other blue tags you 19 photographed from the storage unit in Nashville 20 which describes the Nylex II as having an 21 innerspring. 22 A. Yes. 23 Q. And you can't tell me if the blue tag in 24 184A is an error or if there was a change in the 25 policies and procedures for labeling the Nylex II</p>	<p style="text-align: right;">Page 76</p> <p>1 MS. LISER: Labeling procedure, yes, 2 sir. 3 A. Right. I mean, I don't even know if it's 4 inconsistent with their existing procedure at the 5 time. So I just don't know what the significance of 6 that is, if any. 7 Q. It's got to be one of the other, though, 8 doesn't it, Doctor? Either Medline changed their 9 procedures for their innerspring mattress labeling 10 for the blue label and they started putting 11 "Innerspring" on it, or they started taking it off, 12 or they made an error when they labeled the mattress 13 we see in 184. 14 A. Or there's a third possibility. 15 Q. Which is...? 16 A. That they put these two types of labels on 17 innersprung mattresses -- these two types of blue 18 labels on innersprung mattresses at that time. 19 Q. So that a mattress might have an 20 innerspring, and it could be labeled either way 21 alternatively? 22 A. Well, like I said, I don't know, but I'm 23 just saying, you said there were only two options. 24 I'm saying maybe there's a third option. I just 25 don't know which of these it is.</p>
<p style="text-align: right;">Page 75</p> <p>1 mattress? 2 A. Well, I know that that mattress had 3 innersprings in it, so that's a fact. As to their 4 labeling practices, I don't know. I mean, obviously 5 one of the labels make reference to springs, but I 6 don't know what the procedures are associated with 7 choice of text on the blue and the white labels. 8 Q. And I think you did a good job of pointing 9 out I needed to clarify. It's your belief, from 10 handling the mattresses being stored in Nashville 11 that came from the NHC facility, that all of the 12 Medline mattresses had innersprings in them; is that 13 correct? 14 A. Yes. 15 Q. And we -- it's also your belief that all of 16 the blue tags say "Nylex II Convuluted Innerspring 17 Mattress" except for the one we see in 184A? 18 A. That's my understanding, yes. 19 Q. So what you don't know is the fact that the 20 blue tag we see in 184A, which doesn't reference 21 innerspring when all the rest did, is an error in 22 labeling or evidence of a change in procedure; is 23 that right? 24 MR. SINGER: You're talking about 25 labeling procedure of the blue labels?</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Okay. In fact, let me hand you Exhibits 2 175A, 173A, 176A, 179A, 180A and 181A, which are the 3 pictures that Mr. Singer provided to me that you 4 took of the mattresses you tested at Inter-Tek or 5 the mattresses you had at Inter-Tek. It may include 6 all six mattresses. 7 And, again, for the record, it's only 8 the blue tag that I have given you, not the white? 9 A. Yes. 10 Q. Okay. And you see that -- although you can 11 see the white actually in all of these pictures -- 12 A. You can see the white tag folded over. 13 Q. -- you just can't read it. 14 A. So that you can read the blue but not the 15 white, yes. 16 Q. Okay. 17 A. Yes. 18 Q. All right. You will agree with me that the 19 labels from all of the mattresses that you have at 20 Inter-Tek, none of them reference an innerspring? 21 A. Well, if we limit our -- 22 Q. Okay. The blue tags. 23 A. Exactly. If we limit the question to the 24 blue tags that are depicted in Exhibits 173, 175, 25 176, 179, 180 and 181, these blue tags read in the</p>

1 **second line of the tag "Nylex II Convolved Foam**
2 **Mattress" in all cases.**

3 Q. And you agree that at least some of the
4 mattresses you had at Inter-Tek actually had
5 innersprings in them?

6 **A. Three of the six that were delivered there**
7 **had innersprings in them.**

8 Q. And I don't want to try to hide anything,
9 Doctor. Let me hand you exhibits -- oops, I left
10 out a tag, 178A. I did hide something from you
11 somewhat unintentionally.

12 Let me hand you 174A and 177A, which are
13 two of the white tags. And there are others that
14 you're welcome to look at; I just didn't print them
15 all out. I don't see anywhere on the white tag that
16 the word "innerspring" is referenced.

17 I did try to print out one for springs
18 and one without, but you may want to check your
19 photographs to make sure I did it correctly.

20 **A. Right. I may just do that.**

21 **Right. So let's see, yes. So if you**
22 **could -- what was the question again?**

23 Q. Thank you. I have to think about it.

24 It appears to me that even the white
25 tags for the mattresses don't reference springs or

1 innersprings even if they're on a mattress that had
2 springs in them?

3 **A. There's just one last thing that I'm**
4 **checking here.**

5 **I think that's correct. There's no**
6 **reference to springs on the innersprung mattresses**
7 **that we tested at Inter-Tek.**

8 Q. Were you able to tell -- and I should have
9 asked you this before you flipped through your
10 photographs -- if Exhibit 177 is a white tag from a
11 convoluted foam only or an innerspring? I think
12 it's from an innerspring, but I could be wrong.

13 **A. 177? So let me check.**

14 Q. I actually want to ask for both, so if you
15 can match them up.

16 **A. 174 and 177. So let's see, 174 and 177.**

17 **That, I think, is the same picture.**

18 Q. It looks the same to me.

19 **A. So 177 is associated with -004, which is a**
20 **mattress that I believe had springs.**

21 Q. Okay.

22 **A. So that's --**

23 MR. SINGER: 177, you said?

24 **A. Right, 177.**

25 **And then let's find 174. Unfortunately**

1 **my photographs aren't organized in accordance with**
2 **your questions.**

3 Q. I'm sorry.

4 **A. That's fine.**

5 **So we're on 174A, right? That's the**
6 **question?**

7 Q. Yes, sir.

8 **A. I believe...**

9 **Okay. So 174A is a mattress that has no**
10 **springs.**

11 Q. Okay. And best we can tell, the only
12 difference between the white labels on 177A and 174A
13 is this MDT number is different?

14 **A. Correct. So in 177 it's MDT231280; in 174A**
15 **it's MDT231180.**

16 Q. Now, you will agree with me that the blue
17 tags that you saw on the Medline mattresses -- or
18 most of the Medline mattresses in the warehouse in
19 Nashville actually referenced innerspring on the
20 blue tag?

21 **A. Yes.**

22 Q. And the blue tags on the innerspring
23 mattresses that you tested at Inter-Tek do not
24 reference innerspring on the blue tab?

25 **A. That's correct.**

1 Q. And you don't know if that is a change in
2 the labeling policies or an error or if Medline just
3 randomly labels one innerspring with the word
4 "innerspring" and one innerspring without?

5 **A. I don't know about their labeling**
6 **procedures, so I don't know what significance, if**
7 **any, there is associated with the words that they**
8 **assign to their labels.**

9 Q. I think I understood from your earlier
10 testimony that you have studied photographs taken of
11 Ms. -- the remains of Ms. Tolston's mattress and her
12 bed immediately after the fire.

13 **A. Yes.**

14 Q. Did those photographs appear to be
15 consistent with the photographs that you took of the
16 remnants of the pure convoluted foam Medline
17 mattresses that you burned at Inter-Tek? And when I
18 say "pure," I mean the convoluted foam mattresses
19 without innerspring.

20 **A. I'm not sure I understand your question.**

21 Q. Sure.

22 **A. I don't know what you mean, are they**
23 **consistent with?**

24 Q. Is there anything about what you did at
25 Inter-Tek that would lead you to say that the

Page 82

1 mattress Ms. Tolston was on was not a Nylex II
2 convoluted foam mattress without innersprings?
3 **A. I think my testing -- and if you take my**
4 **testing at Inter-Tek and the photographs, what I**
5 **conclude is that the mattress that was under Mr.**
6 **Tolston did not have innersprings, so it was -- I**
7 **don't know what mattress it was other than it did**
8 **not have innersprings.**

9 Q. Okay. And I guess I'm just trying to make
10 sure that it is not your opinion that the testing
11 you did at Inter-Tek establishes that the mattress
12 she was on was not a Nylex II without innersprings.

13 Are there too many negatives in that question?
14 **A. Well, I think I understand the question. I**
15 **think that there are -- you know, in arriving at my**
16 **opinions, I have to take into consideration**
17 **everything that I've reviewed, okay?**

18 Q. I understand.

19 **A. So that's how I arrive at it. If you limit**
20 **your question just to the testing, that's not how I**
21 **arrive at my final opinion. There's also Hollman's**
22 **testimony associated with what kind of mattresses he**
23 **ordered from Creative Bedding or Medline.**

24 **And again, the conclusion is that the**
25 **mattress under Ms. Tolston was a mattress that did**

Page 83

1 **not have innersprings.**

2 Q. Okay. But there's nothing in your testing
3 that eliminates the possibility that Ms. Tolston was
4 on a Medline mattress that did not have
5 innersprings; is that correct?

6 MR. SINGER: You're talking about
7 testing exclusively?

8 Q. Just testing exclusively. I understand
9 there's other evidence. I just want to make sure I
10 understand the scope and breadth of your testing.

11 **A. Right. So in the testing itself, I tested**
12 **really Nylex II convoluted foam mattresses; that**
13 **is to say, Nylex II mattresses with and without**
14 **springs. And I'm not capable of distinguishing,**
15 **let's say, a mattress that has no metal components,**
16 **such as an air mattress or a foam mattress, or how**
17 **those would perform in a fire. That is, both of**
18 **those would be substantially consumed. The only one**
19 **that would not be consumed is the one with**
20 **innersprings.**

21 Q. I'm sorry, and I'm just -- I'm still not
22 sure that you and I have communicated. Your
23 testing, just your testing, eliminates, in your
24 opinion, the possibility that Ms. Tolston was on a
25 Nylex II innerspring mattress; is that correct?

Page 84

1 **A. That's correct.**

2 Q. But your testing alone does not eliminate
3 the possibility that Ms. Tolston was on a Nylex II
4 convoluted foam mattress without innersprings?

5 **A. Right.**

6 MR. SINGER: You're saying testing as
7 opposed to all the other evidence that he's examined
8 for this case?

9 MS. LISER: I object to the side bar
10 because my question specifically said his testing.

11 **A. Right. So my testing alone doesn't aim to**
12 **address that particular question.**

13 Q. And it doesn't eliminate that possibility;
14 isn't that correct?

15 **A. Based on the testing alone, that's correct.**

16 Q. Okay. What investigation has anyone at
17 Exponent done into the quality control procedures at
18 Creative Bedding or at Medline to ensure that the
19 mattresses ordered were the mattresses delivered in
20 the 1995, 1996, 1997 time frame?

21 **A. I have not done any, and we at Exponent have**
22 **not looked at that issue.**

23 Q. Have you obtained any information, either
24 from Mr. Eldridge or Mr. Singer or Medline or
25 Creative Bedding, on what their quality control

Page 85

1 procedures were in the mid-1990s to assure that the
2 mattresses delivered were the mattresses ordered or
3 invoiced for?

4 **A. Other than what Mr. Hollman said, no.**

5 Q. And Mr. Hollman's testimony was based upon
6 what he asked for and what the purchasing documents
7 said that he got from Medline and Creative Bedding;
8 is that correct?

9 **A. No, I think it's more than that. I mean, he**
10 **also has direct experience with the mattresses**
11 **themselves and speaks to the fact that they feel**
12 **different and so forth.**

13 Q. Did Mr. Hollman actually testify that he
14 checked all the mattresses that came in by feeling
15 them to determine whether they had innersprings?

16 **A. I think he testified that he was often**
17 **directly involved with handling the mattresses. As**
18 **to whether he handled every single one, I'll defer**
19 **to Mr. Hollman. I don't know.**

20 Q. If Mr. Hollman did not handle every mattress
21 that came in to physically determine if there were
22 innersprings, then it is possible that the incorrect
23 mattress got delivered and Mr. Hollman would not
24 know it; isn't that right?

25 MR. SINGER: Objection, form. It's

Page 86

1 argumentative.
2 **A. No, I mean, I -- well, first of all, I have**
3 **not looked at that issue, so I can't answer that.**
4 **Yes, I just don't know. I don't know**
5 **enough about the various things that I would need to**
6 **look at to be able to answer that question.**
7 Q. And that's fine.
8 **A. Yes.**
9 Q. And actually, I probably should have asked
10 the question that way.
11 **A. Sure.**
12 Q. Do you have any information or enough
13 information to offer an opinion that every mattress
14 delivered from Creative Bedding or Medline to
15 National Healthcare met what National Healthcare
16 ordered; in fact, that they were all innerspring
17 mattresses?
18 **A. I've not seen any information that**
19 **contradicts that, but I have not specifically**
20 **undertook any exercise to determine what the answer**
21 **to your question is.**
22 Q. Okay. Have you actually seen -- and you may
23 have answered this, and I apologize -- any of the
24 purchase documents from the transactions between NHC
25 and Medline and Creative Bedding?

Page 87

1 **A. Right. I may have seen them. I may have**
2 **seen them, but I don't specifically recall.**
3 Q. When you reviewed Mr. Hollman's deposition,
4 did you review the exhibits to his deposition or
5 just the transcript?
6 **A. I think in passing I looked at some**
7 **exhibits.**
8 Q. Do you have any reason to believe that Mr.
9 Hollman would not be telling the truth, that what he
10 saw in Ms. Tolston's bed appeared to him to be a
11 Nylex II mattress?
12 MR. SINGER: Objection, argumentative.
13 MR. McKENNA: And form, please.
14 MR. SINGER: And form of the question.
15 **A. Based on the factual information, I would**
16 **say there's an inconsistency between what he says**
17 **and essentially the -- and the evidence, the post-**
18 **fire evidence and the photographs taken by the bomb**
19 **and arson team.**
20 Q. That being the evidence that you've looked
21 at indicates that there were no innersprings in the
22 mattress that Ms. Tolston was using?
23 **A. Right. So the information is on the one**
24 **hand the representation that all the mattresses were**
25 **innersprung mattresses at Nashville NHC or NHC**

Page 88

1 **Nashville, and on the other hand is the factual**
2 **photographic evidence that indicates that the**
3 **mattress that was under Ms. Tolston did not have any**
4 **innersprings.**
5 Q. I want to make sure I understand the first
6 part of that answer. It's your understanding the
7 purchase documents all state that the mattresses
8 delivered to NHC had innersprings; is that correct?
9 **A. Correct.**
10 Q. Mr. Hollman testifies that he ordered
11 innerspring mattresses, correct?
12 **A. Yes, and that his experience is that that's**
13 **what they had.**
14 Q. Is there any other evidence that leads you
15 to believe that every single mattress delivered by
16 Medline or Creative Bedding to NHC had innersprings
17 other than the purchase documents and how you -- and
18 what you believe Mr. Hollman testified to?
19 **A. Well, and also the Nylex mattresses that**
20 **were kept as evidence all were innersprung**
21 **mattresses.**
22 Q. Okay. Anything else?
23 **A. Not that I can think of right now.**
24 Q. We spoke very briefly in the beginning of
25 this deposition that Exponent had been retained by

Page 89

1 National Healthcare to represent them in the
2 personal injury lawsuit. You knew that before you
3 began work on this; is that correct?
4 **A. Say that again.**
5 Q. Sure. National Healthcare -- excuse me,
6 Wausau's insured -- hired Exponent to work with them
7 in the lawsuit filed against them involving this
8 fire. Were you aware of that?
9 **A. What I was aware of was that there was some**
10 **prior engagement that was -- that had since been**
11 **closed when I was contacted by Mr. Singer.**
12 Q. Who at Exponent was involved in that prior
13 engagement?
14 **A. A fellow called Tom Long.**
15 Q. And did you speak to Mr. Long in getting the
16 information from him that he learned in that prior
17 engagement?
18 **A. No, not really. But I did speak to him**
19 **specifically on the issue -- in fact, what I did was**
20 **I asked -- I asked that Mr. Long allow me to**
21 **communicate with who had hired him to ask whether it**
22 **would be possible for us to be retained in this**
23 **particular action with Mr. Jeff Singer, and I also**
24 **had such a similar discussion with Mr. Singer.**
25 Q. And did you, in fact, speak to the person

23 (Pages 86 to 89)

Page 90

1 who had hired Mr. Long?

2 **A. Yes.**

3 Q. And to whom did you speak?

4 **A. I don't remember the name as I sit here.**

5 Q. Was it an attorney?

6 **A. Yes.**

7 Q. David King, perhaps?

8 **A. I don't recall the name. I really don't. I**

9 **mean, for me the question really was, are we in a**

10 **position to be able to take this retention here with**

11 **Mr. Singer or not? And that was the question I put**

12 **to him.**

13 Q. And the response was, you could?

14 **A. Yes, that his matter has long since closed,**

15 **and that you can go ahead.**

16 Q. Is this the first time that you have been

17 retained by an attorney representing a mattress

18 manufacturer?

19 **A. For me personally, I believe so.**

20 Q. What other involvement have you had with the

21 mattress manufacturing industry other than this

22 particular litigation?

23 **A. Well, that's a broad question. I mean, I --**

24 **you know, a lot of the work that I have done**

25 **historically has had to do with the combustion of**

Page 91

1 **upholstery and those kinds of materials with the**

2 **kinds of materials that are made up of what**

3 **mattresses are made up of, but I don't -- I don't**

4 **have prior, let's say, direct retention experience**

5 **with manufacturers of mattresses.**

6 Q. Do you belong to any of the professional

7 organizations that manufacturers of mattresses

8 belong to?

9 **A. No.**

10 Q. Have you had any involvement in promulgating

11 any of the standards that have applied to mattresses

12 over the years, like TB 129 or 121?

13 **A. No.**

14 Q. Have you ever worked with Mr. Singer and Mr.

15 Eldridge before this matter?

16 **A. No, I have not.**

17 Q. At any point when you were devising the

18 protocol to do the testing that you did at Inter-

19 Tek, did you request permission to test any of the

20 mattresses that are being retained in the warehouse

21 in Nashville?

22 **A. No. I didn't ask for that.**

23 Q. Do you believe that testing actual

24 mattresses that were delivered by Medline or

25 Creative Bedding to NHC in the same time period

Page 92

1 would have given you, perhaps, a more accurate test

2 than getting brand-new mattresses manufactured for a

3 test alone?

4 **A. No, absolutely not. I mean, I think that**

5 **the outcome would have been identical, and I -- you**

6 **know, even with the benefit of hindsight, having**

7 **gone through the exercise of testing them, I really**

8 **don't -- I mean, it's really clear to me that there**

9 **would be no difference.**

10 Q. What is the composition of the springs in

11 the mattresses that you tested at Inter-Tek?

12 **A. These are steel springs.**

13 Q. 100 percent steel?

14 **A. I don't know the composition, specific**

15 **composition, but this would be a common steel. So**

16 **essentially it would have iron and then low**

17 **concentrations of, I'd say, other metals.**

18 Q. What is the composition of the springs in

19 the mattresses that were delivered to NHC by Medline

20 or Creative Bedding?

21 **A. It would be the same. I mean, that is, the**

22 **materials that are used for springs in general does**

23 **not vary very much, so you'd expect it to be pretty**

24 **much the same.**

25 Q. And do you know that from any specific

Page 93

1 information you obtained from Medline or Creative

2 Bedding?

3 **A. Just as an engineer. You do not make**

4 **springs from --**

5 Q. Anything else?

6 **A. -- materials that are significantly**

7 **different unless you have a reason to do so; you**

8 **know, unless you're going to send a mattress to**

9 **space or if you have a weight limitation. You know,**

10 **there are specialty materials, like, for example, in**

11 **structural applications you may use titanium instead**

12 **of steel because it's sort of -- the strength-to-**

13 **weight ratio is different from steel or composite**

14 **materials.**

15 **I mean, so -- but here there's**

16 **absolutely no reason to have springs of any other**

17 **material. All of the springs in these kinds of**

18 **applications would have essentially identical**

19 **composition.**

20 Q. Do you know whether Creative Bedding

21 actually manufactured the springs that they used in

22 the mattresses that were delivered to National

23 Healthcare?

24 **A. I don't know who makes those.**

25 Q. Okay. Do you know who made the springs in

1 the mattresses that you tested at Inter-Tek?
 2 **A. I do not know.**
 3 Q. So you don't know if you tested springs from
 4 the same vendor that would have provided the springs
 5 in the mattresses delivered to National Healthcare?
 6 **A. All I know is that these mattresses that I**
 7 **tested were represented as being accurate exemplars**
 8 **of the late '97 innersprung Nylex II mattresses.**
 9 Q. And that representation came from Mr.
 10 Eldridge?
 11 **A. That's correct.**
 12 Q. If you would go all the way back to your
 13 affidavit, one of the early exhibits.
 14 **A. Oh, right here.**
 15 Q. On Paragraph 14, you used the term or
 16 defined the term "Nylex II" as "Nylex II innersprung
 17 mattress with convoluted foam"; is that correct?
 18 **A. Yes, that's correct.**
 19 Q. So throughout your affidavit after Paragraph
 20 14, when you offer the opinion that it was not a
 21 Nylex II mattress on Ms. Tolston's bed, you were
 22 specifically stating it was not a Nylex II
 23 innersprung mattress with convoluted foam; is that
 24 correct?
 25 **A. Correct.**

1 Q. We should not interpret those opinions to
 2 say that it was not any type of Nylex II mattress;
 3 only that it was not a Nylex II innersprung
 4 mattress?
 5 **A. That's correct.**
 6 Q. Let me look through your notebooks real
 7 quick, and I believe I am done.
 8 **A. So these are all photographs right here.**
 9 Q. Oh, that's right.
 10 **A. And the other notebook is right here that**
 11 **has other stuff. So do you want the photographs as**
 12 **well?**
 13 Q. Well, let me ask you, I notice in the
 14 notebook that's called "Deposition Binder" that
 15 there are DVDs at the end of the notebook.
 16 **A. Yes.**
 17 Q. Are the DVDs photographs that are then
 18 printed out in your second notebook?
 19 **A. Well, they're both videos and photographs.**
 20 **So the photographs are all printed out. The DVDs**
 21 **are not, let's say, in any way reproduced on paper,**
 22 **the videos.**
 23 Q. If, in fact, I obtained copies of all of the
 24 CDs or DVDs that are in this first notebook, would I
 25 have all the photographs that are printed out?

1 **A. Yes.**
 2 Q. Okay. The test protocol that you devised
 3 that I know was buried in here somewhere, Exhibit
 4 164A, was that something that you created, or did
 5 you base that upon any other article, learned
 6 treatise type thing?
 7 **A. Something that I created for my purposes.**
 8 Q. Did you use or refer to any technical books
 9 or guidelines to help you determine how steel,
 10 common steel, would react in a fire?
 11 **A. I have extensive, I'd say, experience with**
 12 **that, but I -- but there's no -- I mean, there is no**
 13 **one specific document that I, let's say, opened up**
 14 **in the course of this investigation to then refer to**
 15 **some numbers or other engineering information.**
 16 **There are many books that talk about the properties**
 17 **of steel that I have referred to in the past.**
 18 Q. If I were to -- or if you were to be asked,
 19 in front of the jury or the court, what guide books
 20 or technical manuals support that your testing
 21 protocol is reliable, would you have anything that
 22 you could hand to me, or would it just be based on
 23 your experience?
 24 **A. Well, one document that I could point to --**
 25 **and let me preface that the scope of my**

1 investigation here is relatively well-defined as
 2 agreed to by me with Mr. Singer and Mr. Eldridge,
 3 and it really had to do with the performance of
 4 innersprung mattresses in the context of the
 5 evidence that we have photographed and the evidence
 6 that we have from the bomb and arson team that
 7 documented the scene shortly after the fire was put
 8 out. So as I, you know, answer the question and
 9 say, "Okay, well, here are some documents," some of
 10 these documents really have to do with the fire
 11 investigation procedures in a broad sense, which was
 12 not the scope of my retention here.
 13 **So NFPA 921 is a document that will give**
 14 **you general information that is, let's say, put**
 15 **together for the fire investigator that, you know,**
 16 **identifies, in a broad sense, the general**
 17 **characteristics of materials in fires, including**
 18 **steel. So that would be one example. There are**
 19 **many others.**
 20 **You know, I haven't undertaken the**
 21 **exercise of identifying these for you here, but, you**
 22 **know, certainly the two that jump to my mind is both**
 23 **the Society of Fire Protection engineering -- or SFP**
 24 **-- handbook, and the NFPA, National Fire Protection**
 25 **Association, handbook, both of which are, you know,**

1 very thick, large documents that have a lot of
2 technical information associated with performance of
3 materials in fires.

4 Q. 921A is not that long.

5 A. 921 -- the two handbooks that I referred to
6 just now are probably about two to three inches
7 thick. 921 itself is maybe, I'd say, less than half
8 an inch thick.

9 Q. Okay. What has Mr. Long done in this phase
10 of Exponent's work on this litigation?

11 A. He just helped me coordinate. That's
12 essentially his contribution to this project.

13 MS. LISER: How would the two of you
14 like me to mark the few more exhibits I'd like to
15 take out of these notebooks? Would you like me to
16 just put a Post-it note, and we'll replace it with a
17 Xerox copy.

18 (Document marked as Kytomaa Exhibit 185A
19 for identification)

20 Q. Let me hand you what's going to be marked as
21 185A.

22 A. Yes.

23 Q. Can you tell me what that is?

24 A. That's a document that was sent by Inter-Tek
25 to Tom Long on March 27 which, in essence, is a

1 proposal from them to Exponent for us using their
2 facility for the purpose of our tests as spelled out
3 in my protocol, which is Exhibit 164A.

4 Q. I note that Inter-Tek makes the reference
5 that they will only perform the test once they
6 receive written permission from the manufacturer.

7 A. Yes.

8 Q. Was written permission actually obtained
9 from Medline to do these tests?

10 A. Yes.

11 Q. And do you have that written permission, or
12 did it come from Mr. Eldridge and Mr. Singer?

13 A. The issue really was for someone at Creative
14 Bedding or Medline to communicate directly with them
15 and tell them, you know, go ahead. My understanding
16 of that issue simply is that Inter-Tek does a lot of
17 work for the mattress industry, and they needed
18 essentially clearance to go ahead and do tests under
19 my direction.

20 (Document marked as Kytomaa Exhibit 186A
21 for identification)

22 Q. Let me hand you what will be marked as 186A.
23 Can you tell me what that is?

24 A. Yes. So that's essentially a deposition
25 index or deposition summary that gives you, on the

1 left column, page-and-line quotes from the Hollman
2 deposition.

3 Q. Who is Mr. Andrew Blum?

4 A. Andrew Blum is an engineer in our Maryland
5 office.

6 Q. I think I may have actually met him once
7 before.

8 A. Oh, is that right?

9 Q. The name is very familiar. Maybe from
10 another test.

11 Anyway, did he actually prepare that
12 exhibit?

13 A. This was not an exhibit until you made it
14 one like three seconds ago, so no.

15 Q. Did he prepare that summary that I have now
16 made an exhibit?

17 A. Yes.

18 (Document marked as Kytomaa Exhibit 187A
19 for identification)

20 Q. Can you tell me what 187A is and why it was
21 significant to what you were doing?

22 A. This is a printout of Span-America Web
23 pages. It identifies the kinds of mattresses that
24 Span-America have, and this is really for purposes
25 of general background since Mr. Hollman talks about

1 Span-America and the fact that they have mattresses
2 from Span-America at NHC Nashville.

3 Q. Okay. Your testing leads you to have the
4 opinion that the mattress on which Ms. Tolston was
5 resting on the night of the fire is an all-foam
6 mattress; is that correct?

7 MR. SINGER: Objection. That's not his
8 testimony.

9 Q. I'm sorry, a mattress without innersprings?

10 A. That's correct.

11 Q. I apologize. I should be precise.

12 Your testing doesn't tell you whether
13 it's a Span-America or any other mattress without
14 innersprings; is that right?

15 A. That's correct.

16 Q. Well, actually, that raises an interesting
17 point. Do you have an opinion on whether or not the
18 mattress on which Ms. Tolston was resting was an
19 all-foam mattress?

20 A. I do.

21 Q. And what is that opinion?

22 A. It could have been an all-foam mattress. It
23 could have been an air mattress. It could have been
24 any other kind of mattress that has no innersprings
25 of the kind that the Nylex II innersprung mattresses

1 have.
2 **(Document marked as Kytomaa Exhibit 188A**
3 **for identification)**
4 Q. And can you tell me what Exhibit 188A is?
5 For a minute I thought I'd misnumbered it.
6 **A. So this is a printout from the Invacare**
7 **manual, a hospital bed, and these -- this is -- this**
8 **is the kind of hospital bed that I used in the tests**
9 **at Inter-Tek.**
10 MS. LISER: And I would like copies of
11 all your photographs, but I'm happy with just being
12 provided copies of the CDs at some point.
13 MR. SINGER: Sure.
14 MS. LISER: All right. Then that's all
15 I have, Doctor. Thank you.
16 MR. SINGER: I have just a few
17 questions.
18 (To Mr. McKenna) I'm not sure whether
19 you have. Should we take a break?
20 THE WITNESS: Yes, let's take a quick
21 break to skip to the bathroom.
22 (Recess taken)
23 CROSS EXAMINATION
24 BY MR. SINGER:
25 Q. You said during Mrs. Liser's examination of

1 you that there were distinctions -- I think you used
2 the word "feel" -- between the exemplar mattresses
3 that you tested in Inter-Tek; those that were 100
4 percent foam versus the ones with the steel coil
5 rate. Can you describe what you mean by that?
6 **A. Yes. I mean, essentially what you do is**
7 **you -- what I did was if you squeeze the side of the**
8 **mattress, you can unambiguously and clearly**
9 **determine that the mattress -- whether the**
10 **mattresses have innersprings or not. So essentially**
11 **it's sort of -- by just grabbing the corner and**
12 **squeezing hard, you can tell one way or the other**
13 **whether the mattress is innersprung or not.**
14 Q. Okay. And there were questions posed to you
15 with respect to from a distance or some visualizing
16 of the mattresses, but when doing that examination
17 and feeling the mattress, can you see the springs or
18 if there are springs in the coil --
19 MS. LISER: Objection, form.
20 Q. -- within the ticking or within the mattress
21 itself?
22 MS. LISER: Objection, form.
23 **A. You can actually depress the foam, because**
24 **even the innersprung mattresses have some foam. You**
25 **can depress the foam to the extent that you can**

1 **actually see protrusion of springs.**
2 Q. Okay. So I believe you also gave testimony
3 regarding Ms. -- strike that.
4 You also testified regarding Mr.
5 Hollman's testimony regarding his contact with the
6 mattresses, the Nylex II mattresses, delivered to --
7 I'll start over.
8 During the course of your review of Mr.
9 Hollman's deposition testimony, do you recall any
10 testimony he gave with respect to his contact or
11 feel or lifting or whatever it is of the Nylex II
12 mattresses delivered to NHC Nashville?
13 **A. Yes. I mean, generally speaking, he did**
14 **handle the mattresses, and my understanding of his**
15 **testimony is that he could tell that mattresses had**
16 **innersprings.**
17 MS. LISER: Objection, nonresponsive.
18 Q. Now, Ms. Liser was also asking you questions
19 about what impact or what role does a mattress
20 having bedding on it -- bed clothes or something
21 like that being on the mattress, presence of
22 draperies in the room, oxygen tanks, et cetera; what
23 effect, if any, does the test -- do those
24 circumstances have with respect to the opinions you
25 generated and the reliability of your opinions that

1 you generated during the course of your testing at
2 Inter-Tek in Texas?
3 **A. None at all. None at all, because my**
4 **testing in Texas actually consumed all of the**
5 **combustibles of all the mattress -- or almost all**
6 **the combustibles of all the mattresses that I've**
7 **tested.**
8 Q. So whether you had bedding on top of the
9 mattress or whether there were bed clothes or oxygen
10 tanks or draperies present in the room where the
11 testing was done in Texas, does that have any
12 opinion or any effect on your opinions at all?
13 **A. None at all.**
14 Q. Okay. And the basis for that is what?
15 **A. Well, it's two things. One, all mattresses**
16 **I tested burned almost completely, which would have**
17 **been the case had there been, let's say, more fuel**
18 **as long as it burned completely in the room. And**
19 **the second is that it takes circumstances that**
20 **didn't exist in this fire at NHC Nashville to**
21 **actually consume steel. Steel does not disappear in**
22 **fires.**
23 Q. Now, during the course of your inspection of
24 the evidence inventoried in Marietta, Georgia as
25 well as near Nashville, did you come upon any

Page 106

1 recovered evidence remnants from Ms. Tolston's room
 2 that had steel or other metallic materials?
 3 **A. There were plenty of metallic and**
 4 **nonmetallic materials in both locations.**
 5 Q. And those survived the fire, correct?
 6 **A. Yes.**
 7 Q. Regardless of whether there were draperies
 8 or oxygen in the room or blankets or sheets on Mrs.
 9 Tolston's bed, they still -- those steel and other
 10 metallic items were recovered from her room; is that
 11 right?
 12 MS. LISER: Objection, form.
 13 **A. Right. I mean, I think more specifically,**
 14 **if you look at the relatively fine steel components**
 15 **associated with the bed itself on which she was**
 16 **lying, all of that remained unconsumed by the fire.**
 17 Q. And what were those materials that were
 18 remnants of her bed which she was resting on?
 19 **A. Well, specifically the wire mesh on top of**
 20 **which the mattress was laying as well as the springs**
 21 **that held the wire mesh to the bed frame.**
 22 Q. And the bed frame itself was --
 23 **A. And the bed frame, not consumed.**
 24 **Essentially all of the metal components associated**
 25 **with the bed, her bed, as well as the beds that I**

Page 107

1 **tested, remained unconsumed.**
 2 Q. Okay. I believe one of the deposition
 3 exhibits Ms. Liser marked was the protocol, the
 4 draft protocol for the testing.
 5 **A. Yes.**
 6 Q. And I believe your testimony was that you
 7 had instructed Inter-Tek to follow that protocol.
 8 **A. Yes.**
 9 Q. Right?
 10 **A. In my presence actually, yes.**
 11 Q. Okay. Was there any change with respect to
 12 the order of materials tested?
 13 **A. There was. There was. You can see it in**
 14 **the sequence of my photographs.**
 15 **But specifically if you look at 164A,**
 16 **the protocol calls for four tests under Tabs 7, 8,**
 17 **9, and 10. The first is to test at innerspring**
 18 **mattress; the second is a repeat of Test 1; the**
 19 **third is to test a solid foam mattress; and the**
 20 **fourth is a repeat of Test 3, so a solid foam**
 21 **mattress. We changed the order to testing the foam**
 22 **mattresses first, and then the two innersprung**
 23 **mattresses second.**
 24 Q. Okay. And that's how the testing was
 25 performed?

Page 108

1 **A. That's correct.**
 2 Q. And the reason for the shifting of which
 3 mattress was to be tested first as opposed to last?
 4 **A. The reason for shifting was simply that you**
 5 **and Mr. Eldridge were -- had flight difficulties,**
 6 **and your schedule prevented you from being there on**
 7 **the morning that we started the tests, and you**
 8 **suggested and asked me whether it would be okay to**
 9 **change the order because you wanted to see tests**
 10 **associated with an innersprung mattress.**
 11 **And I said, "That would be just fine.**
 12 **It won't make any difference."**
 13 Q. So the protocol was modified just with
 14 respect to the order of what mattresses would be
 15 tested first, right?
 16 **A. That's correct.**
 17 Q. Ms. Liser also showed you photographs of
 18 what appears to be a blue tag and a white tag from
 19 evidence that you inspected of exemplar mattresses
 20 purportedly taken from the NHC Nashville site when
 21 you visited the storage facility outside Nashville,
 22 Tennessee, correct?
 23 **A. Yes.**
 24 Q. Now, that mattress that Ms. Liser's
 25 referring to was a brown mattress as opposed to a

Page 109

1 blue mattress, correct?
 2 **A. Correct.**
 3 Q. Even though that brown mattress with the
 4 blue tag that describes the mattress to be the Nylex
 5 II convoluted foam mattress had a white tag,
 6 correct?
 7 **A. Yes.**
 8 MR. SINGER: Are the white tags part of
 9 the exhibits here, Sandy?
 10 MS. LISER: Yes. It's black and white.
 11 It was one of his photographs.
 12 Q. Why don't you find it. Can you find a white
 13 tag that was appended to the brown mattress at the
 14 storage facility outside Nashville that you
 15 inspected.
 16 **A. Sure. I believe this is it, but I'm going**
 17 **to check.**
 18 Q. Exhibit 182A.
 19 **A. Let me just check real quick. It should be**
 20 **this.**
 21 **It is this. That's correct, yes.**
 22 Q. And Exhibit 182A, at the top photograph is a
 23 white tag.
 24 **A. Yes.**
 25 Q. And it shows -- at least in your color

<p style="text-align: right;">Page 110</p> <p>1 photograph as opposed to this black-and-white 2 exhibit, that is a brown mattress, correct? 3 A. That's correct. 4 MS. LISER: Objection, form. 5 Q. What color is that mattress -- 6 A. Okay. 7 Q. -- that's it's appended to? 8 A. So the picture of the white tag that is 9 associated with both the -- well, of the white tag 10 that is on the right of Exhibit 182A, in my 11 originals, is brown. 12 Q. And that white tag identifies the content of 13 the mattress to have what? 14 MS. LISER: Objection, form. 15 A. The white tag reads, "All New Material 16 Consisting of Spring Unit Urethane Foam." 17 Q. So even though the brown mattress to which 18 that white tag was appended has a blue label that 19 says "Nylex II Convuluted Foam Mattress," the white 20 tag identifies that there's urethane foam as well as 21 a spring unit within the mattress, correct? 22 MS. LISER: Objection, form. 23 A. That's correct. 24 Q. And I believe your testimony was, when you 25 attended the inspection outside Nashville earlier</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. And as disturbing as they were, there were 2 some images of Ms. Tolston still lying on top of the 3 bedsprings that were on the bed frame itself. Do 4 you recall those photographs? 5 MS. LISER: Objection, form. 6 A. I do. 7 Q. And so there was human tissue and other 8 remains that did remain after the fire was 9 extinguished, correct? 10 MS. LISER: Objection, form. 11 A. Yes. 12 Q. So in addition to some of the other metal 13 that was shown in the photographs after the fire was 14 extinguished, there was human tissue, bone and 15 otherwise, that remained in those photographs? 16 MS. LISER: Objection, form. 17 A. Yes. 18 MR. McKENNA: I don't believe I have any 19 other questions. 20 MS. LISER: Nothing else from me. 21 MR. SINGER: Signature reserved, right? 22 THE WITNESS: Please. 23 MR. SINGER: Thank you. 24 (Whereupon the deposition was concluded 25 at 1:25 p.m.)</p>
<p style="text-align: right;">Page 111</p> <p>1 this year, you touched and felt each of the exemplar 2 mattresses that were purportedly recovered from NHC 3 Nashville; is that correct? 4 A. Yes. 5 MS. LISER: Objection, form. 6 Q. And how many of those mattresses that have 7 Nylex II blue tags were 100 percent foam mattresses? 8 A. None. 9 Q. And what kind of mattresses were they? 10 Regardless of what the blue tag or white tags had to 11 say, what is it that you determined during the 12 course of your inspection that day? 13 A. They were all innersprung mattresses. 14 MR. SINGER: Thank you. I have nothing 15 further. 16 MR. McKENNA: Just actually one 17 follow-up, Dr. Kytomaa. 18 CROSS EXAMINATION 19 BY MR. McKENNA: 20 Q. You were asked some questions by Mr. Singer 21 a moment ago about some of the items, nonmetallic or 22 metallic or otherwise, that were shown in the bomb 23 and arson photographs that seemed to, quote-unquote, 24 survive the fire. Do you remember that testimony? 25 A. Yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 CERTIFICATE 2 I, HARRI K. KYTOMAA, Ph.D., do hereby certify that I 3 have read the foregoing transcript of my testimony, 4 and further certify that said transcript is a true 5 and accurate record of said testimony (with the 6 exception of the following corrections listed 7 below): 8 Page Line Correction 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 HARRI K. KYTOMAA, Ph.D. 19 Sworn and subscribed to before me this _____ 20 day of _____, 2007. 21 _____ 22 _____ 23 NOTARY PUBLIC 24 My commission expires: _____ 25 _____</p>

1 Commonwealth of Massachusetts
2 Suffolk, ss.
3

4 I, Lisa A. Moreira, Registered Diplomate
5 Reporter, Certified Real-Time Reporter and Notary
6 Public in and for the Commonwealth of Massachusetts,
7 do hereby certify that HARRI K. KYTOMAA, Ph.D., the
8 witness whose deposition is hereinbefore set forth,
9 was duly sworn by me and that such deposition is a
10 true record of the testimony given by the witness.

11 I further certify that I am neither related to or
12 employed by any of the parties in or counsel to this
13 action, nor am I financially interested in the
14 outcome of this action.

15 In witness whereof, I have hereunto set my hand
16 and seal this 9th day of October, 2007.
17

18 _____
19
20 Lisa A. Moreira, RMR, CRR
21 Notary Public
22 CSR No. 146299

23 My commission expires
24 December 25, 2009
25